

IN THE COURT OF CRIMINAL APPEALS OF
TENNESSEE

AT NASHVILLE

SEPTEMBER 1999 SESSION

FILED

November 29, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

JOHN T. SULLIVAN,
M1999 00969 CCA R3 PC

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

*

C.C.A. #

*

HICKMAN COUNTY

*

Honorable Timothy Easter, Judge

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(Writ of Habeas Corpus)

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FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

JOHN EVERETT WILLIAMS,
Judge

OPINION

The petitioner, John T. Sullivan, appeals from the Hickman County Circuit Court's order dismissing his petition for writ of habeas corpus. The petitioner is incarcerated in the Department of Correction after pleading guilty to armed robbery, aggravated kidnaping, and aggravated rape and receiving an effective twenty-five year sentence. He filed a petition for habeas relief challenging this continued incarceration; the trial court summarily dismissed this petition. The petitioner appeals this denial and asserts that:

1. The trial court abused its discretion when it dismissed the petition for failing to state a claim cognizable on habeas.
2. The court abused its discretion when it construed the petition as a post-conviction petition and dismissed it as outside the statute of limitations and as filed in the wrong court.

We AFFIRM the trial court's order.

PROCEDURAL HISTORY

On July 3, 1986, the petitioner pled guilty to armed robbery, aggravated kidnaping, and aggravated rape. Since these pleas, the petitioner has filed several petitions in various courts; however, as the petitioner has lost his records of these various actions, the following procedural history is but sketchily drawn. First, the petitioner states that he filed a petition for writ of habeas in the Hickman County Circuit in which he alleged ineffective assistance of counsel. That court, as he remembers, dismissed that petition without prejudice on February 13, 1990. Subsequently, the petitioner states that he filed a petition for post-conviction relief in the Davidson County Circuit Court on December 21, 1990. That petition alleged ineffective assistance as well an involuntary guilty plea. That court dismissed the petition under the applicable statute of limitations; the petitioner cannot recall if he appealed that dismissal. Subsequently, he filed another petition for habeas which was denied; this Court later affirmed that denial. See John T. Sullivan v. State, No. 01C01-9207-CR-00217 (Tenn. Crim. App. filed Dec. 3, 1992, at Nashville). Finally, on February 19, 1999, he filed the instant petition for habeas with the Hickman County Circuit Court. That court dismissed the petition finding that it did not state a valid claim for habeas relief. Therefore, the trial court recharacterized the petition as one for post-conviction relief, and, in turn, denied it as outside the applicable statute of limitations and as

improperly filed in a court other than the court of conviction. From this dismissal, the petitioner now appeals.

ANALYSIS

Failure to State a Claim Cognizable at Habeas

The defendant asserts that the trial court erred in its determination that his petition failed to state a claim properly cognizable at habeas. In Tennessee, the writ of habeas corpus is limited in scope and relief. See Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). “Habeas corpus relief is available only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant’s sentence of imprisonment or other restraint has expired.” Archer, 851 S.W.2d at 164. It is the petitioner’s burden of establishing either of these preconditions. See Tenn. Code Ann. § 29-21-101. If the petitioner so establishes by a preponderance of the evidence, then he may obtain immediate release. See State v. Warren, 740 S.W.2d 427, 428 (Tenn. Crim. App. 1986).

In his petition, the petitioner argues that:

1. The trial court’s judgment is void because the trial judge failed to advise the petitioner of his constitutional rights.
2. His pleas were involuntary and therefore entered without jurisdiction.

The trial court decided that these two related arguments failed to state a valid claim meriting habeas relief. It reasoned that petitioner’s allegations, upon introduction of further proof and after appropriate findings of fact, could establish *at most* that the facially valid judgments may be voided. In turn, it continued, such were not proper subject for habeas relief. This reasoning is in accord with Tennessee Code Annotated § 29-21-101 and Tennessee case law construing the scope of habeas relief. See, e.g., Archer, 851 S.W.2d 157; Potts v. State, 833 S.W.2d 60 (Tenn. 1992); Warren, 740 S.W.2d 427 (Tenn. Crim. App. 1986). Voidable judgements are not within that scope; the judgment must be void. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). The

petitioner has simply not demonstrated that the trial court sentenced him without jurisdiction or that his sentence has expired.

_____Despite petitioner's arguments that his contention of an "involuntary guilty plea" does allege a facial deficiency meriting habeas relief, we note that the record establishes otherwise. The trial court's order accepting the petitioner's pleas specifically states that it is entered only "upon statements on oath made in open court by the defendant in response to questions by the Court" attesting to an understanding of his rights and the voluntariness of his plea. Contrary to petitioner's argument, this order establishes the jurisdiction of the court and the validity of the judgment. Therefore, we agree with the trial court that this issue, as his others, does not present a claim meriting habeas relief.

Recharacterization and Dismissal of Petition

The defendant asserts that the trial court erred by recharacterizing his petition as one for post-conviction relief, not habeas relief, and subsequently dismissing it because it was filed outside the statute of limitations and in the wrong court. The fact that an appellant designates a pleading as a "Petition for Habeas Corpus" does not preclude a trial court from construing the petition as one for post-conviction if the requested relief may only be granted through the post-conviction procedure. Archer, 851 S.W.2d at 164. As previously determined, the instant petition failed to state a claim cognizable at habeas; therefore, the trial court, in its discretion, recharacterized it as a post-conviction petition. Id.; Tenn. Code Ann. § 40-30-102. In turn, the trial court correctly dismissed this petition as filed outside the applicable statute of limitations. See Tenn. Code Ann. § 40-30-101 (repealed 1995). In petitioner's case, that statute began to run from his conviction in 1986. Further, the petitioner has not asserted any ground allowing for either a petition outside the statute of limitations, see Tenn. Code. Ann. § 40-30-202(b), or for reopening a prior petition for post-conviction relief, see Tenn. Code Ann. § 40-30-217. Therefore, we agree with the trial court.

Further, the trial court found that the petition, recharacterized as a post-conviction one, was subject to dismissal because it was filed in the wrong court. Compare Tenn. Code Ann. § 40-30-204 with Tenn. Code Ann. § 29-21-105. We note that he filed this petition in Hickman County while he was convicted in Davidson County, the proper court. Therefore, we agree with the trial court.

CONCLUSION

Accordingly, we AFFIRM the trial court's order dismissing the petition for writ of habeas corpus.

JOHN EVERETT WILLIAMS, Judge

CONCUR:

JOHN H. PEAY, Judge

DAVID H. WELLES, Judge